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REPORTS

NOTES OF THE WEEK

Maintenance in Prison

Keeping a man in prison is a costly business, and the public not unnaturally complains a little at paying several hundred pounds a year for a man who ought to be earning an honest living but has deprived himself of the means by committing crime. The complaint is not against the authorities, who do what they can to keep down expense, but against a system which, many contend, could be improved by providing harder and more productive labour for prisoners. Occasionally also there is an instance of a prisoner who has means out of which he could pay for his own maintenance.

A metropolitan stipendiary magistrate was reported in *The Times* of April 10 as telling a man that there ought to be some means of making him pay for his keep in prison. The defendant had pleaded guilty to obtaining sums of £25 and £10 by false pretences and was sentenced to 12 months' imprisonment in all. A police officer said the man had an income of £4,000 a year paid to him by trustees.

Why a man with such an income should think it worth while to obtain comparatively small sums by fraud and risk imprisonment is hard to guess. Undoubtedly the opinion of the learned magistrate will be endorsed widely.

The Vagrancy Act, 1824, contains a power to make persons convicted under that Act pay towards the expense of arresting and imprisoning them. Section 8 provides that any money found upon or in the possession of any offender may be applied towards the expenses of apprehending, conveying to the house of correction and maintaining him therein, and if money sufficient for these purposes be not found the justice may order his effects to be sold and so applied, and the overplus to be returned to the offender.

So far as we know, this provision has rarely been employed during this century, although we have heard that at least one metropolitan magistrate made such orders occasionally when a beggar was found in possession of a considerable amount of money. No doubt it is treated as obsolete.

The Oath

We are indebted to Mr. R. Kenneth Cooke, O.B.E., clerk to the justices of the county borough of Rotherham and the Strafforth and Tickhill Upper petty sessional division of the West Riding of Yorkshire, for sending us a copy of the quarterly bulletin *On the Bench*, which he prepares for the justices. In addition to a short editorial this issue contains a comprehensive article on evidence, an article dealing with local byelaws, a selection of recently reported cases, and particulars of cases committed for trial by the justices with the results—altogether a thoroughly useful and entertaining booklet, well printed on good paper.

At p. 118, *ante*, we had a note on the case of *R.* v. *Pritham Singh*, in which there was a difficulty about administering an oath to a Sikh. Mr. Cooke's *Bulletin* provides an interesting addendum.

"The case of *R.* v. *Pritham Singh* became a matter of particular local interest a few days ago. It was intended to call a Sikh to give evidence before the Rotherham borough magistrates' court in committal proceedings for robbery with violence and in view of the decision in that case it became necessary to adjourn the hearing for a week in order to borrow a copy of the Sikh holy book, the "Granth," so that the witness might be properly sworn. Previously such a witness would have been allowed to affirm.

"Apparently only three copies of this book are available in England; two are retained in temples and one is held in the library at Leicester. When we telephoned for the loan of this book the librarian said that since the leading case the library had been inundated with similar requests from courts all over the country.

"When the book arrived it was found to be in Punjabi manuscript on parchment bearing the following words on the fly sheet 'Sikh Granth taken from a tent in the entrenchments at Ferozshapur Dec. 24th, 1845.' It was therefore one of the spoils taken during the Sikh Wars 1845–1846."

A Warning to Justices

Not to those of the present day, but to those of 1597, was the warning addressed! The *Bulletin* records the holding of a dinner by the Rotherham borough magistrates, which seems to have been a great success. One of those present received a letter from a history student son containing the following: "Admonition sent by the Privy Council to the justices in 1597. . . moderate your diet, consideringe that the meetinges of the Assizes were not ordayned for feastinges and prodigall expences, but for the administracion of justice among Her Majesty's subjects."

Whether attending Assizes, quarter sessions or petty sessions, justices of today need no such admonition. They are no more, perhaps even rather less, given to the pleasures of the table than other people, and Shakespeare's description of "the justice in fair round belly with good capon lin'd" certainly does not fit. As to the rest, "with eyes severe and beard of formal cut, full of wise saws and modern instances," the beard is seldom seen, and the eyes are not so very severe, but we hope the wise saws and modern instances are still parts of his equipment.

What Constitutes Exceeding a Speed Limit?

It is the practice, in order to ensure that there is satisfactory evidence that a speed limit has been exceeded either to time or to follow a vehicle over an appreciable distance, but there is no legal requirement that this shall be done. The offence under s. 10 of the Road Traffic Act, 1930, is complete if any person drives a motor vehicle of a particular class or description on a road (for however short a distance) at a speed greater than that allowed for that class or description of vehicle and, similarly, under s. 1 of the Act of 1934, it is unlawful to drive a motor vehicle in a built-up area at a speed exceeding 30 miles per hour.

The *East Anglian Daily Times* of April 12, 1958, reports the acquittal, on a speeding charge, of a motor coach driver. The police allegation was that the coach averaged 48 miles per hour over a measured half-mile. The charge, of course, was not one of driving at 48 miles per hour, but of driving at a speed greater than the maximum permitted speed, whatever that might be.

According to the report the defendant told the magistrates that "he might well have exceeded his limit in passing three vehicles which were fiddling about in front of him, but he did it in the interests of giving his passengers a smooth ride." This reads very much like an admission that he did in fact commit the offence with which he was charged, even though he may not have agreed that his speed reached 48 miles per hour. It is not surprising, therefore, that the magistrates, although they came to the conclusion that the defendant was not guilty of the offence of exceeding the speed limit, refused to allow him the costs against the police for which he thought fit to apply after the charge had been dismissed.

Dangerous Speeds

Modern cars on sale to the ordinary motorist are capable of very high speeds. It is often argued that speed is a main cause of many of the accidents which occur with lamentable frequency on our roads. Be that as it may, few people will deny that a speed of 65 to 75 miles per hour in a restricted area is grossly excessive and is probably dangerous within the meaning of s. 11 of the Road Traffic Act, 1930. The fact that the driver is an expert driver and that his car is in first class condition and fitted with exceptionally powerful brakes is no excuse, such speeds cannot be tolerated. The *Evening Argus*, Brighton, of April 15, 1958, contains a report of the appeal by a driver against a six-month disqualification, imposed on him when he was fined £25 for driving at a speed dangerous to the public. He was said to have driven along Brighton sea front, in the restricted part, at 65 to 75 miles per hour and to have accelerated, after leaving that part, to such a speed that he pulled away from a police car the speedometer of which was showing 80 miles per hour. It is reported that when seen later by the police his comment was, "Don't be silly. You know I can drive this car at 100 miles per hour with safety."

On the hearing of the appeal the learned recorder said that the appellant showed a complete lack of responsibility in driving at that speed, and he added that the roads of this country were not meant for such speeds and are not built for them. Nevertheless, he thought that the appellant, who had previous convictions for speeding offences, had at last learned his lesson. He removed the disqualification but increased the fine to £100, the maximum monetary penalty for that offence, and ordered the appellant to pay 30 guineas costs of the appeal. It seems probable that the disqualification was the part of the original sentence which hit the appellant hardest and it is to be hoped that his narrow escape and the increased penalty imposed by the recorder will result in his not committing such offences in the future. But he and others tempted to drive in this way should bear in mind that courts may be driven by the pressure of public opinion, with the steady increase in casualties, to resort more and more to disqualification for such offences. The roads of this country are not meant to be, and must not be used as, race tracks and those who so misuse them are best kept off the roads.

Driving While Disqualified

Section 7 (4) of the Road Traffic Act, 1930, provides a maximum penalty of six months' imprisonment and/or a fine of £50 for the offence of driving while disqualified, and a court is required to impose imprisonment unless they think that, having regard to the special circumstances of the case, a fine would be an adequate punishment for the offence. The only object of making an order of disqualification is to ensure that, subject to the defendant's right to apply later for removal of the disqualification, he shall not drive a motor vehicle on the road for the stated period, and it is most important, therefore, that the offence of driving in defiance of an order of disqualification be treated as a serious one.

We have noticed not a few reports in the press of such offences. The *Liverpool Daily Post* of April 15 deals with one committed by a 21 year old soldier. He was charged with that offence and with two other offences. In July, 1956, he was convicted for driving while disqualified and was, on that occasion, disqualified for five years. In defiance of that ban he drove during January, 1958. For this latest offence he was sent to prison for six months and disqualified for 10 years.

If offences of this kind become more prevalent the authorities may have to consider whether this should not be made an offence to which s. 18 of the Magistrates' Courts Act, 1952, applies, with heavier maximum penalties prescribed if the conviction is on indictment. This would make it possible for those who do not learn their lesson from one such conviction to be more adequately dealt with if they offend again.

An Offence and its Consequences

A young man who put a firework into the pocket of a girl's jeans and, apparently, caused her serious burns, was sentenced by Leeds magistrates to three months' imprisonment for causing bodily harm. He appealed against sentence, and a fine of £10 was substituted.

According to the *Manchester Guardian*, the learned recorder told the appellant he was a stupid young man, adding that if he had thought he intended to do the girl injury the term of imprisonment would have been increased.

This raises the question, so often debated, of how far a court should take into account the actual consequences of an offence in passing sentence. A favourite type of case by which to illustrate the difficulty is that of the motorist who is guilty of an offence like careless driving. This may be the result of a moment's inattention or an error of judgment which might pass unnoticed but for unexpected consequences, possibly a fatality. Should the court treat it as a bad offence because of the result, or should it disregard the result and deal with the offender as having committed a comparatively slight offence? We think the first point to make is that if there was, in all the circumstances, grossly careless driving such as to indicate recklessness the appropriate charge would be dangerous driving or even causing death by dangerous driving. Short of that, it would seem right to look at the form of carelessness and its cause rather than at the tragic consequence.

On the general question of the consequences of an offence, it has to be remembered that a man is presumed to intend the natural and probable consequences of his voluntary acts. This presumption is not irrebuttable, however, and therefore in cases like the Leeds case the question would be whether the defendant intended to inflict the injury, either consciously doing an act meaning to injure, or doing it recklessly, knowing that it was likely to injure. On this point there may have been a difference of view between the two courts.

Morally, of course, it is the intention or state of mind rather than the consequence that decides the degree of guilt. A man who attempts to commit murder is as guilty as a man who succeeds, and the former is fortunate in not being liable to the death penalty, as Stephen, J., would have had him be. In this matter the law is not consistent. Sometimes it prescribes the same penalty for an attempt as for the completed offence, while in others it makes the attempt a lesser offence. On the whole, the presumption about intending natural consequences works well if applied carefully.

The Winchester Bushel

The present English dry measure of a bushel or four pecks which was introduced in 1826 superseded the Winchester bushel which was slightly less. At the Bedfordshire quarter sessions the older standard measure was referred to in an application by the Church Commissioners for the appointment of two persons as arbitrators "to inquire into and ascertain the average price of a Winchester bushel of good marketable wheat within the county of Bedford for the term of 10 years." The application was made in pursuance of the Shelton Enclosure Act of 1794. The chairman said he had the original copy of the Act before him.

It was explained that the Act provided for the payment of certain tithes to the Rector of Shelton or to his successors, and for the purpose of the application the successors were the Church Commissioners. An Enclosure Award dated 1796 was produced, and two arbitrators were appointed by the justices to sit with a third person to decide the average price of a Winchester bushel.

The last award was made in 1948 when, it was stated, the average price was raised from 4*s*. 9*d*. to 6*s*. 10½*d*. The arbitrators will report their finding to the midsummer sessions.

Contamination

In a letter printed later in this issue, the clerk of the magistrates at Coventry comes very properly to their defence, against whatever stricture was capable of being read into our remarks (or those of our local correspondent) at pp. 100 and 166, *ante*. We never doubted that the magistrates had given most anxious consideration to a case which was important in itself, and made more difficult (as it seemed to us) by the manner of its presentation—we mean, by the throwing in of an argument that, even if the contamination the prosecution claimed to prove was not shown to be dangerous to health, there was nevertheless an offence, by the terms of the regulations. The full note of the evidence, and the decision, and the copy of the Case Stated, which the clerk has supplied for our perusal, have enlarged our knowledge without altering the conclusions we reached upon the printed reports. We still find it curious that the magistrates held the risk of contamination spoken of by the prosecution witnesses to be not dangerous to health. It is true that scientific evidence for the defence was to the effect that fish is likely to become uneatable from its own putrefaction, before the external contaminating agents spoken of could take effect; also that washing and prompt cooking would in the ordinary course get rid of those contaminating agents before they could do harm. We said this ourselves in our first Note upon the case, but we did not say (and do not believe) that "contamination means contact with some infective organism," as this witness expressed it, and this evidence did not, to our mind, dispose of the prosecution's evidence in regard to half prepared foods which would be only lightly cooked before consumption. We remain of the opinion, also, that a more clean-cut result would have been achieved by a decision of Not Guilty: the prosecution could then have taken the opinion of the Divisional Court upon the whole case. For this the magistrates cannot be blamed. The Divisional Court spoke of the care with which they had gone into the case, and, with the wisdom that comes after the event, we think they would have had a fairer chance if they had not been presented by the prosecution with the dubious argument that risk of contamination was an offence, even though not shown to involve a risk of injury to health. We end where we began. It would be a disaster if the failure of this prosecution were allowed to deter local authorities from enforcement of the regulations—even though they may now be confronted with the burden of proving affirmatively that the risk of contamination of food by dog's dung and human sneezing involves a risk to health. Let it be granted that fish, and it may be meat, in a condition which necessitates washing and full cooking, are not the most vulnerable articles of diet. There remain in the west end of London, to say nothing of side streets and poorer places, hundreds of shops exposing daily thousands of fish cakes, cut pies, and articles of confectionery, to those very risks.

Work Measurement in Justices' Clerks' Offices

The trouble started with Home Office Circular No. 48 of 1953. This document required Home Office approval in detail to expenditure to be incurred under parts III and IV and s. 8 of the

Justices of the Peace Act, 1949: no member of the staff of a clerk to the justices could be newly appointed nor could any additional furniture or equipment be bought until full details, with reasons why the expenditure was considered necessary, had been furnished to the department and there approved.

In 1954, following representations, the requirement about furniture and equipment was deleted but that about staff remained unaltered.

The Central Council of Magistrates' Courts Committees, the County Councils' Association and the Association of Municipal Corporations believed from the beginning and continued subsequently to express the view that in this matter Home Office meticulosis was going too far altogether. They saw no reason to depart in this relatively small field of expenditure from the practice which has worked long and smoothly in relation to local authority services entitled to Exchequer assistance (including a number supervised by other sections of the Home Office itself), namely the submission of a reasonably detailed annual estimate which when approved becomes the basis and guarantee of financial subsidy.

In the meantime we understand the Home Office set on foot their own investigations. The aid of a Treasury O and M unit was enlisted and, with the approval of magistrates' courts committees, inquiries were made of the work done in certain offices. A detailed analysis of duties was prepared and an assessment made of the man-hours required to perform each task. Armed with this information the Home Office suggested to the Central Council that if the Council were prepared to adopt a system of work measurement it would be possible to dispense with the detailed control over staff appointments.

After consultation the two local authority associations and the Central Council accepted the Home Office suggestion in principle but did not by any means agree with the method of investigation or with the detailed results arrived at by the Treasury officials. We are informed that a Working Party has now been set up and has under active consideration the system of work measurement to be adopted.

It will not be an easy task to determine a fair basis, one difficulty being the different types of offices which will probably make several separate assessments necessary. If practical standards can be devised however a useful task will have been done; and experience in other sections of public expenditure, for example that on school meals, has demonstrated that detailed costing can produce worth while economies.

THE VALUE OF A CONDITION OF RESIDENCE IN A PROBATION ORDER

POINTS TO BE CONSIDERED AND THE RELATED ROLES OF PROBATION OFFICERS, WARDENS AND STAFF

By NORMAN W. WESTON AND PHILIP JOWETT

Cases appearing before courts for criminal offences can be said to have evinced symptoms of social failure which have resulted from (i) unsatisfactory social or moral standards and/or (ii) internal disturbance and maladjustment due to external strain and worry, emotional conflicts or environmental factors.

The vast majority of those who fail or break down for the second reason given above place themselves in the hands of a doctor. In these cases, medical opinion insists that their successful recovery and social rehabilitation demands their consent and co-operation in the treatment considered necessary. It is also a fundamental principle of probation that offenders must give their consent to being dealt with by this method and it is submitted that it is on this principle that the success of probation in practice is founded.

Probation provides an opportunity to reform voluntarily, to recognize the need for self-discipline, to receive advice and act upon it in a way not possible under any other penal system. This is particularly important when dealing with adolescents (especially the 17–22 age group) during their struggle for self-determination and independence, emotionally as well as financially.

In 1936, the Departmental Committee on the Social Services in Courts of Summary Jurisdiction agreed with the 1927 Young Offenders Committee that " the functions of the probation system should be supervision in the open . . ." but, if it is conceded that probation is treatment by consent, there should be no objection to that treatment including various conditions, one of which may be that the offender shall reside in a place named for a period up to 12 months. This could be his own home, that of a relative, lodgings, a hospital, a probation home or hostel. In the case of the two latter they both provide an opportunity to remove a case from an unsatisfactory environment and emotional conflicts associated with the environment. In addition, a home gives relief from the pressure and strain of everyday living and, with this, the time to resolve personal difficulties and to develop responsibility and independence.

When a home or hostel is being considered as a necessary condition of a probation order, the limitations of such treatment as well as the advantages must be clearly understood. It is important that the probationer should be informed of the general conditions existing at the home in question, its probable isolation, the limited amount of pocket money allowed and restriction on personal liberty, so that he cannot say afterwards he did not understand to what he was consenting, as his personal co-operation is vital. In a home, as distinct from a hostel, work must be created but it should not be assumed that this implies vocational training will be available. Its real object is the inculcation of the habit of working regularly and reliably. To this end, the work should provide interest and have some therapeutic value and there should be sufficient available to enable a schedule approximating normal working hours.

It must be understood that the guiding rule for the maintenance of discipline in homes and hostels states that ". . . this shall be maintained by the personal influence of the warden and staff." If an offender is too disturbed, too immature and/or too subnormal mentally to respond to this, then he should not be sent to a home or a hostel—in fact,

he is probably not a case for probation at all. Where a mistake of this kind is made the effect in the closed communal life at a home and, to a lesser extent, in a hostel can be disastrous. The need for correct diagnosis and placement if probation is to succeed, particularly where there is a condition of residence cannot be emphasized too much.

Neither the court nor the probation officer should regard a probation home or hostel as a convenient place of disposal for cases which, because of misplaced sentiment, they are reluctant to see committed to borstal; nor should such a placing be regarded by the probation officer as a dumping ground, the last resort after everything else has been tried. Neither should a condition of residence be offered as an escape from punitive consequences, nor with an over-optimistic estimate of returning home when the case is reviewed after completion of six months' residence.

The Originating and Home Probation Officer

Rule 51 (as amended) of the Probation Rules, 1948, places a mandatory obligation upon the home probation officer to maintain contact with the home and family of a probationer who, temporarily, is living elsewhere for, if the probationer is ultimately to return home, the main task of the probation officer there is to prepare the way for his eventual satisfactory reception. It goes without saying that usually there is a great deal of family casework to be done whilst a probationer is away if the progress made is to be maintained and developed after his return. Where there is a condition of residence it can never be a case of "out of sight, out of mind."

In law probation is not a punishment but it is regarded as such by probationers, particularly those in homes and hostels. Therefore, it is extremely important that a link with their homes is maintained and everything possible done to prevent them feeling cast out and forgotten. The home probation officer is often the one stable influence to whom a probationer can become attached and is referred to as "my" probation officer, emphasizing the importance of this relationship. If it could be seen how much letters from him have a particular importance, even when they are not always answered, home probation officers would appreciate better this aspect of their work. Being away from home, probationers naturally feel some anxiety about the situation there and how it may affect their future resettlement. Their concern is even more marked where they have no settled home and in both cases they need constant re-assurance and evidence of their personal worth to somebody.

The Liaison Probation Officer and the Warden

The relative duties of the warden of a home or hostel and the liaison probation officer in respect of cases "in residence" are not clearly defined and must to some extent overlap. Much depends on personalities. Primarily, the warden is responsible to his management committee for the efficient running and administration of the home or hostel. The liaison probation officer has a duty in respect of probationers "in residence" and to report on their progress to the magistrates of the supervizing court as with other cases. In addition, he is especially required to report on and the court to review a case after the initial period of six months' residence is completed. In doing so, the home probation officer and the warden have to be consulted. The liaison probation officer must be given the opportunity to see a probationer at the place of residence in private, he must maintain contact with the home probation officer and consult with the warden on all developments affecting the probationer's progress and future. In brief, the warden's authority is confined within the limits of the home or hostel, the liaison probation officer is responsible for all matters affecting the probationer outside the home or hostel.

Of course, it would not be right to operate solely on this basis and the warden and the probation officer must co-operate fully in the treatment of the probationer if the latter is to gain the most benefit from a period of residence. The liaison probation officer should offer guidance and support to the warden but, at the same time, everything possible must be done to retain the confidence of the probationers as well as the warden. This can only be achieved if the warden and liaison probation officer appreciate their respective roles and difficulties and remain loyal in their dealings with each other and the probationers under their supervision.

Case Work.

The case record should be studied jointly so that the probationer can be allocated to the instructor most suited to his temperament and ability, progress noted and developments discussed. The warden, his staff and the liaison probation officer must work as a team and it is considered that instructors should be brought into case discussions and some part, at least, of the case record made available to them. The communal life in a home or hostel is, itself, a form of group therapy and the warden, in particular, has a unique opportunity of using this and manipulating the environment to suit individual cases. In this connexion it is thought that casework can also be undertaken by the liaison probation officer and that he has a very real contribution to make. Experience has shown that this varies according to the relationship achieved with individuals but, generally, it has been most effective with the more intelligent cases. Those with subnormal intelligence seem able more often to accept the benefits of the more stable environment and to form satisfactory relationships upon which they can begin to resolve their inner difficulties; but those of higher intelligence appreciating more clearly the end in view seem to regard this as an ulterior motive, suspecting every approach and finding it necessary to test—sometimes to destruction—any relationship formed. In these cases, the fact that the liaison probation officer operates from outside the home and its staff is often an advantage and discussion with the probationer seeking to give him support and, perhaps, insight into the etiology of his trouble frequently produces a marked improvement and a change of attitude, especially if this is combined with enlightened and sympathetic handling in the home or hostel.

From all that has been said it is obvious that the value of the home or hostel depends very largely upon the genuine desire of all those concerned to co-operate in the best interests of probationers dealt with in this way. There must be a proper appreciation of the part each has to play together with complete frankness, loyalty, mutual trust and confidence. Without this, we are left with only the material advantages which, by themselves, are of little avail.

Possible Changes

Residential treatment could be used much more often and, as suggested earlier, is not in conflict with the spirit of probation.

Many may not agree with compulsory military service but there is no doubt that it frequently did valuable service in developing the personality and sense of responsibility of a large number of immature young men, as many probation officers would testify. Apart from the discipline and training undergone it was the separation from home that

produced an enforced self-reliance and developed maturity. It is these qualities which are so frequently lacking in young people put on probation and it is considered that hostels and homes could be used with good effect on the more unsatisfactory of these.

To quote H.R.H. The Duke of Edinburgh when opening a probation home in May, 1955, "This new venture will continue the work of coping with the problems of today, using the methods of today, but based on the eternal principles of a lively Christianity. This is a wonderful undertaking in every way, particularly as it recognizes that misfortune rather than evil intent is at the bottom of most problems."

More Places Available—Dual Purpose Homes

There should be more hostels and homes with a number, including all homes, being dual purpose. That is to say, being places where probationers stay initially as in a home but from where, later, they can go out to work. This would provide an incentive and an opportunity for those living in homes to demonstrate the progress made and their ability to maintain themselves satisfactorily, thus reinforcing their self-confidence before they leave the protected environment of the home. Greater numbers would allow more classification of homes and hostels than just that of age grouping and religious denomination as at present.

Classification
Age Range Extended

At present, the age range on entry is from school leaving (*i.e.*, 15) to the day before 21st birthday. It is considered this could well be extended.

Training of Wardens and Incorporation in Probation Service

It would improve the chances of success in homes if wardens/matrons were given training similar to that of probation officers. Further, it would be an added advantage if they had served for a period as a probation officer and were, in fact, officers in the probation service with the opportunity to transfer from one function to the other.

Suggested Size and Type of Home

Homes in particular should not cater for more than 20 "residents" at any one time.

It is suggested that more could be achieved if these were established on a cottage home basis, by having five or six adjacent traditional type houses (3/4 bedrooms) constructed as an independent rural community with sufficient acreage or workshops to provide necessary work for the number envisaged. The staff and their families would live in these houses and accommodate a suitable number of residents each. The warden would participate in this and it should not be difficult to organize affairs satisfactorily. This would put an added strain on staff and their families and much would depend on the staff engaged but capital cost, maintenance and overheads generally should be much less than with larger establishments and this should allow sufficient margin for adequate remuneration, so that suitable staff would be attracted and engaged. Such an arrangement would approximate normal family life much more closely and aid the satisfactory social re-adjustment of "residents." If such a proposition was undertaken the capital investment involved could, if desired later, be more easily recovered as the property would be much more marketable than most of the large premises at present in use.

BRAZEN CHARIOTS

We thought last year that we had said all that was necessary on the subject of parking in the streets. We were moved to return to the topic at p. 88, *ante*, largely by a letter in *The Times* from Mr. John Scott Henderson, Q.C., together with some letters we had ourselves received from readers. One of the latter writes to us again, and suggests that we were drawing a red herring across the most important trail, by speaking in the same article about parking outside residential premises and parking in the business streets of towns. If, however, he looks back to our earlier articles he will see that we were at some pains to distinguish these aspects of the problem, even though the problem is not very different in a residential area and in a business area when it is regarded from the point of view of the victims—though certainly more acute in the business area. The victims are, first, other users of the highway, including motorists who at a particular time are not desiring to park; secondly the occupiers of premises whose access, or that of customers and clients, is impeded by parked cars. Our correspondent sees these aspects differently because he rests upon the proposition that local authorities, highway authorities or others, ought to be made to provide free parking accommodation in every business area, and that until they do so the motorist, at any rate, should not be put to inconvenience. He does not go so far as this in regard to residential areas. Frankly we consider that this demand for free parking space is due to an attitude of mind which has all too evidently arisen among motorists, especially amongst owner drivers. This attitude is illustrated when the same correspondent tells us that from time to time he uses his car for business visits to one of the new towns. Because the middle portion of the highway is too narrow for him to leave his car while he does his business, he leaves it on the grass verge, and considers he has a grievance in that the metalled highway is not wider. It is instructive to analyse his own confession of his practice. Let it be granted that on his first visit to the new town he did not know that there would be insufficient space on a metalled highway for him to leave his car, nor did he know (as we assume to be the fact) that there was no garage or parking accommodation off the highway within reasonable distance. On this first occasion, therefore, it might have been comparatively venial, even though illegal, for him to drive his car on to the grass verge out of the way of other traffic. It is difficult to see any excuse for his doing the same thing on later visits. Knowing that there was no lawful place to leave his car, it was his duty as a law abiding citizen to use some other means of transport—as he would have had to do if he did not own and drive a car. He has simply shown that he regards the ownership of a car as conferring a superior status: the motorist is believed to be entitled (just because he is a motorist) to privileges and an immunity not enjoyed by other people.

Returning to residential areas, we can hardly do better than quote from a woman householder writing in *The Times* who says: "It does seem odd that a stranger who wants to avoid garage charges has the right to prevent delivery of coal, for example, and it does seem clear that if the necessities of householders had been given proper attention the present absurd situation would never have arisen. Thousands of people living in quiet streets find themselves suddenly living in what amounts to noisy garages, and invalids have to be decanted into the middle of streets because they cannot be put down at front doors". In the current issue of a monthly magazine we read

that in Washington, D.C., it is now compulsory to provide land for a garage, whenever a new house is built or an old building converted into more than one dwelling. In England, on the other hand, new houses have been put up, mile after mile, since 1946, with no provision for the cars which should have been foreseen. We are informed by the chief constable of a northern town that, in consequence of complaints from householders about the sort of thing to which the letter just quoted calls attention, he has cautioned many motorists, first orally and secondly by letter. In consequence it is being spread about that he is a persecutor of motorists and " putting people in a very difficult position "—instead (as he remarks in his letter to us) of their putting him in the difficult position of having to enforce the law against those who deliberately flout it, but are otherwise respectable inhabitants. He recognizes that householders are entitled to resent the eyesore of having cars parked, cleaned, and repaired in the street, whilst the highway authority and the drivers of ambulances and fire engines are equally entitled to object from their special points of view. In regard to the residential areas of towns the fundamental mischief is, as he says, that people are all the time buying cars without stopping to consider where they are going to keep them. With some particularity a correspondent described at 121 J.P.N. 375 what goes on in a typical street or square in London; we are interested to see that a private member's Bill has been introduced in the House of Commons to deal with parking in residential streets, although we do not commit ourselves to the remedy which the Bill proposes.

We do not, however, wish at this point to emphasize the hardship to householders in residential areas, from the present illegal parking of other people's cars, together with the mess and dirt which follow in greater or less degree. We return to the most serious of the different aspects of this matter, namely the interference with business directly and indirectly.

There is an important distinction to be drawn between types of parking in the business areas, a distinction which we have already tried to hammer home, but which we reiterate because the motoring correspondent who accuses us of drawing a red herring is himself doing that very thing, when he speaks of parking in business areas as if it were simply a matter of a man's driving to his destination to transact a piece of business, and driving away when he has done so. When this is all, the law as it stands does not deal harshly with the driver of a vehicle, mechanical or other. The decision in *Gill* v. *Carson and Nield* (1917) 81 J.P. 250, shows the courts to have been willing to recognize obstruction as legitimate when it is limited to the time occupied in obtaining necessary refreshment for the driver of a vehicle. The decision in *Dunn* v. *Holt* (1904) 68 J.P. 271 goes possibly too far in accepting as legitimate an obstruction for a commercial purpose; the decision depended, however, upon the finding of fact by the magistrate, that the obstruction was not excessive in time or space. The proliferation of owner driver vehicles would, we think, still leave an impossible position for other members of the public if the last mentioned decision were applied to the man who goes to transact a piece of business, occupying some appreciable but foreseeable time, and leaves his vehicle outside the place of business. What happens is, however, even worse. Under cover of taking his car to his destination in the business area, and doing that which has caused him to go there, the motorist commonly leaves his car throughout the working day—most often outside somebody else's premises, with the result that this somebody cannot reach those premises in a vehicle, nor can his customers do so, or vanmen delivering merchandise. A neat illustration was provided in *The Times* while this article was in the press. A leading surgeon drove to his consulting room in Harley Street, but could not reach the door (Harley Street is commonly lined from end to end by standing vehicles on both sides, reducing the space for moving vehicles to a single lane). The surgeon thereupon left his car in the middle of the street, expecting (as he said in court) to be in the consulting room only a few minutes. He was there for 25 minutes, which would not have been an unreasonable time, had he not been blocking one of the middle lanes of the street. Seeing that he was doing so, police very properly removed his car, with the result that he missed appointments, and he was summoned for obstruction. His defence that as a busy surgeon he was entitled to deprive other people of use of the highway, and his complaint of the removal of his car, were alike untenable, but the true blame lay partly with the borough council, who failed to provide parking places anywhere in their borough, and above all with the motorists who had got in first, and blocked the access to his door. Had he been standing at the kerb, his obstruction of the street could have been excused on the precedent of *Dunn* v. *Holt*, *supra*.

Elsewhere in central London it is the commonest thing to find a street designed for four lanes of vehicles, reduced to two by all-day parking, with a delivery lorry halted perforce in one of the two middle lanes, while the driver or his mate threads his way with crates or packages between the kerbside cars.

A correspondent we have quoted in an earlier article, whose office is near the city hall in Westminster, tells us that conditions in that part of the city are as bad as ever. Streets which are " unilateral " from 11.30 to 6.30 on alternate days are commonly lined on both sides throughout the early afternoon. Some streets where the yellow notices forbid parking, or waiting even to deliver goods, are blocked for hours, with the result that vehicles entering or leaving the main thoroughfares must do so in single file, and wait their turn, so that the main streams of traffic are held up. This correspondent recognizes the numbers of several owner-driver cars, which are parked close beside no-parking notices all day and every day. The police do nothing.

This all-day parking is the practice above all which must be stopped; we cannot see any hope of a cure unless Parliament speedily enacts some effective penalties, and the police and those who control them take proper action for enforcement. An occasional prosecution here and there is not much use, especially when the bench imposes less than the full penalty. The penalty is often smaller than the charge for garaging, and is regarded in much the same light as penalties imposed in some towns for Sunday trading, as a sort of licence fee.

We have said, and we repeat, that local authorities must bear a heavy responsibility for not having provided many more parking places in areas when the need was becoming evident, before things reached their present pass. We have also said, and we repeat, that heavy responsibility rests upon successive Governments and Parliaments, for not having faced the situation, and considered what ought to be done to bring the law into accordance with the facts. But, granting that there has been default by public authorities at national and local level, we remain convinced that the present state of things is due primarily to an unjustified attitude of mind on the part of all too many motorists, and secondly to an attitude on the part of all too many police authorities that enforcing the existing law is an invidious task which they had better leave alone. What is immediately needed is effective enforcement action, with increasing daily penalties where the offence is repeated day by day, until car-owners learn that their rights in the highway are not superior to those of other drivers; of pedestrians; of the occupiers of adjacent premises, and of the hundreds of thousands of ordinary people whose journeys necessarily made by public transport are burdensome and frustrated through brazen-faced obstruction.

HOUSING ACT APPEALS

By W. E. LISLE BENTHAM

A short but interesting point under the Housing Act was recently before the Court of Appeal in the case of *Honig* v. *the Lewisham Borough Council*, which does not so far appear to have been reported, but which may be of some importance in connexion with housing appeals generally. The circumstances of the case were briefly as follows.

On November 21, 1955, the council served a notice under s. 9 of the Housing Act, 1936, upon Mr. Honig, the owner or person having control of a certain dwelling-house let off in flats, requiring him to execute specified essential repairs to the premises to render them fit for human habitation. In default of compliance with such notice and pursuant to s. 10 (2) of the Act, on November 12, 1956, the council served notice of intention to enter the house and by contract obtained by tender proceeded to carry out the repairs, which were completed by May 14, 1957, at a cost of some £120.

On July 15, 1957, pursuant to s. 10 (3) of the Act, the council served a formal demand for the recovery of its expenses and on August 9, 1957, the owner entered an appeal against such demand in the local county court under s. 15 upon the ground that he was not responsible for the cost of the repairs to the house, which had been necessitated because of the demolition by the council of a formerly adjoining house, and of its alleged negligence in failing to concrete, cement, and so deal with the site thereof as to render it impervious to damp and water, which he alleged had in fact seeped through the soil and so caused damage to his house.

After an agreed lengthy adjournment owing to the owner having had to undergo a serious eye operation, his appeal eventually came on for hearing on December 11, 1957, when his counsel applied for a further adjournment on the ground that he had recently been admitted to hospital with suspected coronary thrombosis. The solicitor appearing for the council, however, stated that, whilst the council had every sympathy with the appellant on account of his incapacity, there had been ample time for him to have given proper instructions, and that he must oppose any further adjournment because he wished to take preliminary objection to the appeal being heard at all upon the following grounds:

(*a*) That s. 15 of the Housing Act, 1936, which as from September 1, 1957, had been replaced by the similarly worded s. 11 of the consolidating Housing Act, 1957, expressly provided that such an appeal must be brought within a period of 21 days of the service of the council's demand, which had expired on or about Monday, August 5, 1957, so that, allowing for that day being a bank holiday, the appellant was some three days out of time ;

(*b*) That the section also contained an express provision that on such an appeal no question shall be raised which might have been raised on an appeal against the original notice requiring the execution of the works and that the appellant had not chosen to appeal against that notice ; and

(*c*) That in any case the appeal had no merits inasmuch as there were a number of other defences open to the council.

The learned county court Judge said that he was not proposing to go into the matter then, as he thought that the appellant and his advisers should have a further reasonable opportunity of preparing his case. He would therefore extend his time for appealing and adjourn the hearing to January 28 next, reserving the question of the costs of such adjournment, although he thought that they should ultimately be awarded to the council in any event. The council's solicitor thereupon pointed out that nowhere in the Housing Acts was there any power given so to extend the time for appealing, but the Judge said that it could be done under the rules (meaning the County Court Rules, 1936, made under s. 99 of the County Courts Act, 1934) and made an interlocutory order accordingly.

Now s. 15 of the Housing Act, 1936 (except subs. (1) (*f*) thereof) reproduced s. 22 of the Housing Act, 1930, as amended by s. 83 (2) of the Housing Act, 1935. The earlier Housing Acts provided for appeals to the Minister of Health, the procedure of appeal to the county court being for the first time substituted by s. 22 of the 1930 Act. Appeals under that section were governed by sch. 4, part II, of that Act until the making of the County Court Rules, 1930, order 50, r. 6 (1) of which provided a special procedure. Both the schedule and the order were subsequently revoked and not replaced, and consequently order 6, r. 6 (1) of the County Court Rules, 1936, applies unless and until special rules are made, which has not yet been done. This rule (as amended by S.I. 1950 No. 1993/L. 29) provides (*inter alia*) that:

> "Where under any Act an appeal from any order, decision, or award of any tribunal or person lies to a county court, then, subject to the provisions of that Act, the following provisions shall apply:
>
> "(*a*) The appellant shall, within 21 days after the date of the order, decision or award, file in the court office" certain specified documents, or, in other words, lodge his appeal.

It might be argued that, having regard to the words "The rules made under s. 99 of the County Courts Act, 1934, for *regulating the procedure and practice under this section*" contained in s. 15 (3) of the 1936 Act (now s. 38 (1) of the 1957 Act), the procedure and practice of all appeals under the section is now regulated by r. 6 (1), and that accordingly the time of 21 days allowed thereunder can properly be extended under order 13, r. 5 of the same rules, either by consent, or by the court on the application of any party, and notwithstanding that the time originally allowed has expired. However, even assuming that the demand served by the council was an "order" or "decision" (it can hardly be said to be an "award") of a "tribunal or person," which is open to doubt, the wording of the rule "*subject to the provisions of that Act*" would appear to mean, in effect, unless there are any provisions of the Act which are contrary to or inconsistent with those of the rule, and it would seem that there are; because the rule says "within 21 days after the *date* of the order, decision or award," whereas s. 15 (1) of the 1936 Act and s. 11 (1) of the 1957 Act say "within 21 days (after the date) of the *service* of the notice, demand or order"; and it is probably fortuitous that both the Act and the rule prescribe the same period of 21 days rather than any other period. Moreover, although the point was not specifically argued, in *Donegal Tweed Co. Ltd.* v. *Stephenson* (1929) W.N. 214 it was held that r. 14 (3) of order 50b of the County Court Rules, 1903–1928, was a mere rule of procedure and did not give a county court Judge any jurisdiction to enlarge the time fixed by the Landlord and Tenant Act, 1927, for

making application for a new lease; and in *Cohen* v. *West Ham Corporation* (1933) 97 J.P. at p. 157 Lord Hanworth remarked that s. 22 of the Housing Act, 1930, made it impossible to appeal after the lapse of the 21 days. It therefore appears that the power to enlarge time contained in order 13, r. 5 of the rules can only be invoked to extend a period which is fixed by the rules themselves as indeed the rule states and not one which is provided by statute.

Accordingly, in the *Lewisham* case, the council entered an appeal against the interlocutory order of the county court Judge which came before the Court of Appeal (Lord Justices Hodson and Pearce) on January 27 last. The Judge had made no note of the proceedings in the court below, nor had he been requested to do so by either party pursuant to s. 108 of the County Courts Act, 1934, but the Court of Appeal accepted an affidavit by the council's solicitor which had been approved by the Judge, together with a short memorandum of the Judge himself, as sufficient proof that the point had been taken and the order made. No objection was taken to this by counsel for Mr. Honig, who indeed conceded that the Judge had no power to enlarge his time for appealing and confined himself to the plea that, since this appeal to the Court of Appeal had been none of his making, the owner should not be condemned in costs. However, after hearing counsel for the respondent council, who pointed out that Mr. Honig could have withdrawn his appeal as soon as the point had been taken in the court below, Lord Justice Hodson in the course of his judgment said:

"The right to go to the county court was given by the Housing Act, 1936, and that right was a right to go within 21 days. This appeal on behalf of Mr. Honig to the county court was made on August 9, 1957. It was made after the 21 days had expired but was only a little out of time. There is now no dispute but that the county court Judge acted without jurisdiction in extending the 21 days. Therefore, this appeal must be allowed."

"One has then to consider the question of costs. The point was taken by the solicitor who represented the council before the county court Judge, when an application for an adjournment was made, that there was in any event no jurisdiction in the county court Judge to hear the matter because of the 21 days limit imposed by the statute. Notwithstanding that, the county court Judge, having had the point taken, felt that his right to extend the time must be contained in the County Court Rules, although further consideration no doubt would have led him to a different conclusion. But, counsel on behalf of the applicant having obtained the adjournment, the applicant continued to leave the matter in that state as if it were an effective order of the county court Judge, which left no course open to the council but to come to the Court of Appeal and get the order of the county court Judge reversed. As the council were plainly right in the position they took up and have succeeded in this appeal, I think it must follow that the applicant should pay the costs."

The Court accordingly allowed the council's appeal with costs there and below, which effectively put an end to the owner's appeal.

Although the point raised has never had to be argued in detail, from such *obiter dicta* as are to be found in the reported decisions and from the fact that it was conceded in the *Lewisham* case (which may account for the absence of any official report of that case), it therefore now appears to be sufficiently established that the county court Judge has no power to extend the period of 21 days for appealing which is now contained in s. 11 of the Housing Act, 1957.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Streatfeild, Slade, Donovan and Havers, J.J.)

R. *v.* MATHESON

March 24, April 1, 1958

Criminal Law—Murder—Diminished responsibility—Undisputed medical evidence in favour of defence—Right of jury to convict of murder—Procedure—Plea of guilty of manslaughter on ground of diminished responsibility not to be accepted—Ambiguity in verdict—Homicide Act, 1957 (*5 and 6 Eliz. 2, c. 11*), *s. 2.*

APPEAL against conviction.

The appellant was convicted at Durham Assizes before Finnemore, J., of capital murder and was sentenced to death. The case for the prosecution was that the murder was committed, on one view of the case, in the course of or furtherance of theft, and the defence was that of diminished responsibility under s. 2 of the Homicide Act, 1957. Three medical witnesses were called for the defence, all of whom had personally examined the appellant. All were agreed that, although he was not insane within the meaning of the M'Naghten Rules, his mind was so abnormal as substantially to impair his mental responsibility, and all gave reasons for their opinions. No medical evidence was called by the prosecution in rebuttal.

Held: that, though the jury might have been entitled to return a verdict of Guilty of murder if there were any facts entitling them to reject or differ from the opinions of the medical men, and though the conduct of the appellant before, at the time of, and after the killing might in some cases be a relevant consideration for the jury in determing that issue, yet, in the present case, as there was unchallenged medical evidence of diminished responsibility and as no facts or circumstances appeared which could disprove or throw doubt on that evidence, the verdict of Guilty of capital murder was one which could not "be supported having regard to the evidence" within the meaning of s. 4 (1) of the Criminal Appeal Act, 1907, and the court would, therefore, substitute a verdict of manslaughter and a sentence of 20 years' imprisonment.

Counsel: *Waller, Q.C.*, and *P. M. Taylor*, for the appellant; *Stanley-Price, Q.C.*, and *Rawton-Smith*, for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter-Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Donovan and Havers, JJ.)

R. *v.* WALLWORK

April 2, 1958

Criminal Law—Indictment—Place—"In the county of S. or elsewhere"—Indictments Act, 1915 (*5 and 6 Geo. 5, c. 90*), *s. 3, sch. 1—Evidence—Power of judge to call witness—Complaint—No evidence by complainant herself.*

APPEAL against conviction.

The appellant was convicted at Sussex Assizes before Paull, J., of incest with his daughter aged five and was sentenced to seven years' imprisonment. The indictment charged the offence as having been committed "in the county of Sussex or elsewhere." The girl had been living with her grandmother at Woking, Surrey. On June 8, 1957, the appellant took her away for a holiday, and she slept in his bed at Littlehampton, Sussex, on June 8, 9 and 10. About 6 *p.m.* on June 11 the appellant returned her to her grandmother and about midnight she was examined by a doctor, who found that there had been sexual interference with her. Between 6 and 12 on that evening the girl's step-grandfather had been present in the house with the girl and her grandmother. The step-grandfather was not called as a witness for the prosecution. In his opening speech defending counsel suggested that the step-grandfather might have committed the offence. The judge took the view that at that stage of the case he himself could not call him as a witness. The child had been put in the witness-box by the prosecution, but was unable to give any

evidence, but evidence by her grandmother of a complaint by the child, in which she named the appellant as her assailant, was admitted in evidence.

Held: (i) that, incest being an offence wherever in England it was committed, the words "in the county of Sussex or elsewhere" were surplusage and did not affect the validity of the indictment; (ii) the judge could have called the step-grandfather himself, as a judge has power to call a witness who he thinks can throw light on the case even after the close of the case for the prosecution; (iii) it is undesirable that a child as young as five should be called as a witness; (iv) the basis of the admissibility of a recent complaint being that it goes to show consistency of the complainant's story and conduct, such complaint is inadmissible where the complainant herself has given no evidence. In the circumstances, however, the Court would apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, and dismiss the appeal.

Counsel: *Harold Brown, Q.C.*, and *Curtis-Raleigh*, for the appellant; *Royle*, for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter-Butler, Esq., Barrister-at-Law.)

R. *v.* ST. MARGARETS TRUST, LTD. AND OTHERS

March 31, April 1 and 21, 1958

Hire Purchase—Finance company—Disposal of goods without specified percentage of cash price being paid—Defence—Absence of mens rea—Hire Purchase and Credit Sale Agreements (Control) Order, 1956 (*S.I.* 1956, *No.* 180), *art* (1).

APPEALS against conviction.

The first appellants, St. Margarets Trust, a finance company, were convicted at the Central Criminal Court before Diplock, J., on September 16, 1957, of seven offences of disposing of goods in circumstances which contravened art. 1 of the Hire Purchase and Credit Sale Agreements (Control) Order, 1956. The second appellants, Oliver Autos, Ltd., a company engaged in buying and selling cars, and the third and fourth appellants, Victor Richard and Sidney John Hone, two of its officers, were convicted of aiding and abetting the commission of the offences. All the appellants were fined: St. Margarets Trust, a nominal fine of £5 on each count; Oliver Autos, £50 on each count; Richard, £50 on each count, and Hone, £50 in all.

By art. 1 of the Hire Purchase and Credit Sale Agreements (Control) Order, 1956: "A person shall not dispose of any goods to which this order applies in pursuance of a hire-purchase or credit sale agreement . . . unless the requirements specified . . . are or have been satisfied in relation to that agreement." The requirements included one that a specified percentage of the cash price, which varied with the class of goods, had to be paid before the signing of the agreement. In the case of "mechanically propelled vehicles" the percentage was 50 *per cent*, so that one effect of the order was that a purchaser of a motor car on hire-purchase had to pay a deposit of at least 50 *per cent.* of the cash price.

As a result of a conspiracy between the second, third and fourth appellants and certain customers who required motor cars on hire-purchase, a false inflated cash price was stated to St. Margarets Trust, who were thereby induced to advance more than they would had the truth been told to them. They were also informed untruthfully that the customer had already paid his 50 *per cent.* of that false cash price. In fact he had not even paid the full 50 *per cent.* of the true cash price and part of the excessive advance from St. Margarets Trust was used to supply the deficiency. In those circumstances the transaction was carried out in a way which in law made St. Margarets Trust the owner of the vehicle and since the word "dispose" in art. 1 of the order by definition included the disposal of the right to possession, it followed that St. Margarets Trust executed a transaction which was forbidden by art. 1 in as much as 50 *per cent.* of the true cash price was not paid before the signing of the hire purchase agreement. St. Margarets Trust admittedly acted, however, quite innocently throughout. The first appellants contended that, in the absence of *mens rea*, they could not be convicted of an offence under art. 1, and the other appellants contended, that, as the first appellants in the absence of *mens rea* had committed no offence, they themselves had not aided or abetted the commission of any offence.

Held: having regard to the object of the order and the fact that its words were an express and unqualified prohibition of the acts done by the first appellants, the question of *mens rea* was irrelevant. The appeals must, therefore, be dismissed and the appellants must pay the costs.

Counsel: *Gerald Gardiner, Q.C.*, and *J. C. Lawrence*, for the first appellants; *Silkin* for the other appellants; *Lawton, Q.C.* and *Faulks*, for the Crown.

Solicitors: *Dennison, Horne & Co.; Lewis Silkin & Partners; Solicitor, Board of Trade.*

(Reported by T. R. Fitzwalter-Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Donovan, JJ.)

ROYAL LONDON MUTUAL INSURANCE SOCIETY, LTD. *v.* HENDON BOROUGH COUNCIL

April 18, 1958

Rating—Relief—Sports ground—Ground owned by company—Maintenance for benefit of employees—Benefit derived by company—Remoteness—Rating and Valuation (Miscellaneous Provisions) Act, 1955 (4 *and* 5 *Eliz.* 2, *c.* 9), *s.* 8 (1) (*c*).

CASE STATED by London quarter sessions.

The Royal London Mutual Insurance Society, Ltd., appealed to quarter sessions against the general rate which had been charged by the local authority, the Hendon borough council, in respect of the Royal London Sports Ground, of which the company were the occupiers and owners.

Section 8 (1) (*c*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, provides as follows: "This section applies to the following hereditaments, that is to say . . . any hereditament consisting of a playing field (that is to say, land used mainly or exclusively for the purposes of open-air games or of open-air athletic sports) occupied for the purposes of a club, society or other organization, which is not established or conducted for profit and does not (except on special occasions) make any charge for the admission of spectators to the playing field . . ."

It was proved or admitted that the insurance company were the owners and occupiers of the Royal London Sports Ground which contained several playing fields and a pavilion. The ground was used for the purpose of open-air games, and refreshments were available in the pavilion. No other activity took place upon the ground. The management and control of the ground was undertaken by a committee, formed jointly by two clubs, whose members comprised the headquarters clerical staff of the insurance company. The use of the ground was confined to the employees of the insurance company. The expenses of running the ground were defrayed partly by the employees and partly by the insurance company.

Quarter sessions held that the company were entitled to relief, and the local authority appealed to the Divisional Court. It was contended that the words "occupied for the purposes of a club" should be construed as meaning "occupied exclusively for those purposes," and that, as the insurance company itself had derived benefit from the sports ground in so far as it was an inducement to employees to enter its employment and thereafter be kept in good health, it could not be said that the ground was "occupied exclusively" for the purposes of a club.

Held: there was no reason for reading the word "exclusively" into the subsection in the manner suggested; if there were any substance in the suggestion that the insurance company itself derived benefit from the club, quarter sessions had rightly held that that benefit was too remote to be taken into account, and, therefore, the appeal must be dismissed.

Counsel: *Miss M. S. Viner*, for the appellants; *Roots*, for the respondents.

Solicitors: *R. H. Williams*, Town Clerk, Hendon; *A. Russell Firth.*

(Reported by T. R. Fitzwalter-Butler, Esq., Barrister-at-Law.)

CHANCERY DIVISION

(Before Upjohn, J.)

Re 77 GLENDALE AVENUE, EDGWARE

April 18, 1958

Requisition—Compensation—Right to compensation—Sale of requisitioned property—De-requisition before completion—Compensation (Defence) Act, 1939 (2 *and* 3 *Geo.* 6, *c.* 75), *s.* 2 (3).

ADJOURNED SUMMONS.

On January 26, 1956, the vendor agreed to sell to the purchaser freehold property described in the contract of sale as 77 Glendale Avenue, Edgware. At the date of the contract the property was requisitioned by the local authority under emergency powers.

It became de-requisitioned on February 6, 1956, and on February 23, 1956, the vendor conveyed the property to the purchaser. Compensation for dilapidation during the requisitioning period became due at the end of that period, *i.e.*, February 6, 1956. By s. 2 (3) of the Compensation (Defence) Act, 1939, compensation shall be paid to the person who is at the end of the requisition period the "owner of the land." By s. 17 (1) "owner" is defined as "the person . . . who would receive the rackrent of the land if it were let at a rackrent." The purchaser claimed the compensation money on the ground that, although the vendor was the owner at the relevant date and could give a valid discharge to the local authority for the receipt of the money, he obtained it as his trustee.

Held: the vendor, as owner, was entitled to receive the money and to retain it, there being no provisions in the contract of sale to make him a constructive trustee for the purchaser of that money.

Counsel: *Blundell*, for the purchaser; *Cook*, for the vendor.
Solicitors: *Frank J. French & Co.; Worrell, Fordyce & Lys.*
(Reported by F. Guttman, Esq., Barrister-at-Law.)

PERSONALIA

APPOINTMENTS

The following appointments for courts of quarter sessions have been made by The Queen on the recommendation of the Lord Chancellor:

Mr. H. G. Talbot, chairman, and Mr. N. F. M. Robinson, deputy-chairman, for the county of Derbyshire; Mr. W. L. Burn, chairman, for the county of Durham, and Mr. A. C. Bulger, deputy chairman, for the county of Gloucestershire. All these appointments took effect from April 28, last.

Mr. W. H. Openshaw has been appointed chairman of Liverpool county quarter sessions, in succession to the late Mr. A. E. Jalland, Q.C. Mr. Openshaw is the second son of the late Sir James Openshaw, formerly sessions chairman for the Liverpool, Preston and Bolton areas. Mr. Openshaw has also been appointed recorder of the borough of Preston and Judge and Assessor of the borough court of Pleas.

Mr. T. W. Hicks, previously deputy clerk to Malton and Norton, Yorks. (North Riding), rural district councils, has been appointed clerk to the council to succeed the late Mr. T. T. Stockdale. Mr. Hicks has been with the council for 21 years.

Mr. J. G. Thomas has been appointed clerk to Sidmouth, Devonshire, urban district council, to succeed Mr. R. Pickard on the latter's resignation. Mr. Thomas was previously deputy clerk to the council.

Mr. Frank Dutton, D.P.A. (Liverpool) has been appointed legal and committee clerk to Huyton-with-Roby, Lancs., urban district council, as from June 2, next. Mr. Dutton is at present legal assistant to Burton-upon-Trent county borough and previously was senior clerk with Widnes, Lancs., borough council.

Mr. J. B. B. Kendrick has been appointed to succeed Mr. H. T. R. Bates as deputy chief inspector of audit at the Ministry of Housing and Local Government (*see* our issue of May 3, last).

Mr. P. S. Milner-Barry, O.B.E., has been appointed director of establishments and under secretary at the Ministry of Health in succession to Mr. E. M. T. Firth, C.B., whose appointment as registrar-general was recently announced. Mr. Milner-Barry is an under secretary and director of organization and methods at the Treasury. The appointment which takes effect on May 1 is for a time and Mr. Milner-Barry will be seconded by the Treasury to the Ministry of Health.

Mr. William Joseph Wallis Hill has been appointed official receiver for the bankruptcy district of the county courts of Croydon, Guildford, Kingston-upon-Thames, Slough and Wandsworth. This appointment took effect from April 5, last.

Mr. Wilfred Whitehead has been appointed official receiver for the bankruptcy district of the county courts of Aylesbury, Banbury, Brentford, Chelmsford, Edmonton, Hertford, Newbury, Oxford, Reading, St. Albans and Southend. This appointment took effect from April 5, last.

Mr. Ernest Gilmour Harper has been appointed an assistant official receiver in the Companies (Winding-Up) Department, with effect from April 11, last.

Mr. Percival Charles Hewett has been appointed an assistant official receiver in the Companies (Winding-Up) Department, with effect from April 5, last.

RETIREMENTS

Mr. Harold Dale, clerk to Cricklade and Wootton Bassett, Wilts., petty sessional division magistrates, has retired after 56 years' service to the bench, the latter half of that time as clerk. Mr. Dale will be succeeded by Mr. T. R. Hood. He will continue in the post of coroner for Wiltshire.

Mr. Walter H. Graham retired recently from the clerkship of the Tywardreath petty sessional division, after serving for nearly 48 years in this capacity. Mr. Graham was admitted in 1904, and continues in practice with the firm of Graham and Graham, St. Austell. Mr. Graham has been appointed, for the third year, sheriff of Cornwall. During the past half century, Mr. Graham said when tributes were paid him in court, the decisions of the bench had, when challenged in the High Court or at quarter sessions, always been upheld. Mr. Graham is succeeded by Mr. E. R. King, formerly clerk at St. Austell, Wadebridge and Camelford.

Superintendent R. E. Pascall, who has been in command of the Winchester police division of Hampshire constabulary for the past 10 years, has announced that he is to retire shortly. He came to Winchester in 1947 to succeed the late Mr. H. R. Miles shortly after the amalgamation of the old city police with the county force. Supt. Pascall joined the Hampshire constabulary in 1927 and served at Alresford and in the New Forest, where he was promoted sergeant in 1936. He was then at Lymington, and on promotion to inspector moved to Fareham in 1938. From there he was successively at Lyndhurst and Andover until his promotion to superintendent and transfer to Winchester after the war.

OBITUARY

Mr. John F. Hatchard, clerk to Sherborne, Dorset, magistrates, has died at the age of 52. Mr. Hatchard went to Yeovil when he was 18 and was articled to the late Mr. John A. Mayo, of Messrs. Mayo & Son. He qualified in 1933, became a partner in 1943, and principal of the firm a year later.

NEW STATUTORY INSTRUMENTS

1. **NATIONAL HEALTH SERVICE, ENGLAND. HOSPITAL AND SPECIALIST SERVICES.** The National Health Service (Designation of London Teaching Hospitals) Amendment Order, 1958.

This order is made for the purpose of deleting the Alexandra Hospital for Children with Hip Disease, in consequence of the closing of that hospital, from the list of hospitals designated by the Minister of Health as a teaching hospital under the name of the Royal Hospital of St. Bartholomew. The order also makes provision for compensation in certain cases to officers affected by the closure of the hospital.

Came into operation April 1, 1958. No. 505, 1958.

2. **ELECTRICITY.** The Electricity (Financial Years) (Amendment) Regulations, 1958.

The Electricity (Financial Years) Regulations, 1948, provide that the financial year of an Electricity Board, other than the North of Scotland Board, shall end on March 31. By virtue of s. 2 (8) of the Electricity Act, 1957, an Electricity Board includes the Central Electricity Generating Board. These regulations amend those regulations so as to apply them to the Electricity Council also.

The opportunity has at the same time been taken to indicate the effect of the amendment to subs. (1) of s. 67 of the Electricity Act, 1947, under s. 15 of, and part II of sch. 1, to, the Electricity Reorganization (Scotland) Act, 1954, whereby the South of Scotland Board as well as the North of Scotland Board become excepted from the regulations.

Came into operation April 1, 1958. No. 509, 1958.

3. **SUGAR.** The Sugar Beet (Research and Education) Order, 1958.

This order provides for the assessment and collection of contributions in 1958 from the British Sugar Corporation, Ltd., and growers of home-grown beet towards the programme of research and education set out in the schedule to the order.

Came into operation April 1, 1958. No. 530, 1958.

4. **EXCHANGE CONTROL.** The Exchange Control (Authorized Dealers) (Amendment) Order, 1958.

This order amends the list of banks and other persons authorized under the Exchange Control Act, 1947, to deal in gold and foreign currency.

Came into operation April 1, 1958. No. 533, 1958.

5. **EXCHANGE CONTROL.** The Exchange Control (Authorized Depositaries) (Amendment) Order, 1958.

This order amends the list of authorized depositaries, with whom, under the Exchange Control Act, 1947, certain securities are required to be deposited.

Came into operation April 1, 1958. No. 534, 1958.

6. **NATIONAL HEALTH SERVICE, ENGLAND.** The National Health Service (Superannuation) (Amendment) Regulations, 1958.

These regulations provide for the amendment of the National Health Service (Superannuation) Regulations, 1955, in their application to persons employed at

the Yarmouth Naval Hospital who enter the service of a Regional Hospital Board when, under the Yarmouth Naval Hospital Transfer Act, 1957, the Hospital becomes vested in the Minister of Health.

An established civil servant who enters the employment of a Board in those circumstances will be subject to the National Health Service (Superannuation) Regulations and will be able to reckon for pension purposes all previous pensionable service as a civil servant. He may, however, exercise an option to remain subject to the conditions and enjoy the benefits of the Superannuation Acts relating to civil servants instead of those of the regulations.

Unestablished civil servants are enabled to reckon their service as a civil servant for the purpose of determining their eligibility for benefits under the regulations.

The regulations also amend reg. 58 of the National Health Service (Superannuation) Regulations, 1955, to provide that former established civil servants at Ministry of Pensions hospitals and at the Yarmouth Naval Hospital should, in the National Health Service, (a) remain pensionable if without any break of service they became part-time employees, and (b) be able to reckon certain previous non-pensionable service for the purpose of determining their eligibility for benefits under the regulations.

Came into operation April 1, 1958. No. 535, 1958.

7. **CUSTOMS AND EXCISE.** The Import Duties (Exemptions) (No. 4) Order, 1958.

This order exempts methane from duty under the Import Duties Act, 1932.

Came into operation April 2, 1958. No. 537, 1958.

8. **OTTAWA AGREEMENTS.** The Ottawa Agreements Order, 1958.

This order exempts—(a) rice in the husk, and (b) husked rice which has not been further processed after husking from the Customs duty of 6s. per cwt. chargeable under the Ottawa Agreements Act, 1932.

Came into operation April 2, 1958. No. 538, 1958.

9. **OVERSEAS SERVICE.** The Governors' Pensions (Maximum Amounts) Order, 1958.

This order increases the maximum amount of a Governor's pension from £3,000 a year to £3,750 a year and of a gratuity payable in respect of a Governor dying in office from £4,500 to £5,625.

Came into operation April 1, 1958. No. 543, 1958.

10. **MINES AND QUARRIES. MINERAL WORKINGS RESTORATION.** The Ironstone Restoration Fund (Contributions) (Rate of Interest) Order, 1958.

Under the Mineral Workings Act, 1951, operators of certain ironstone mines have to pay a contribution to the Ironstone Fund within one month of the end of each financial year. Section 4 (3) provides that under-payments or over-payments should be recoverable by or from the Minister with interest at such rate as may from time to time be determined by the Treasury.

By this order the Treasury now determine that the rate should be increased from four and a half per cent. per annum (which has been in force since March 1, 1957 (S.I. 1957/294)) to six per cent. per annum.

Came into operation April 1, 1958. No. 544, 1958.

11. **AGRICULTURE.** The Imported Livestock Order, 1958.

This order revokes and replaces the Livestock (Import from Eire and the Isle of Man) Regulations, 1945, as amended, and incorporates the provisions of the Imported Livestock (Marking) Order, 1954, as amended.

The principal changes are:—

(a) the control provisions relate to livestock entering the United Kingdom from the Channel Islands as well as from the Isle of Man and the Republic of Ireland;

(b) "livestock" is defined to include the carcases of pigs in Northern Ireland;

(c) vehicles and containers used for the carriage, handling or concealment of livestock imported, removed or brought into the United Kingdom in contravention of the order are liable to forfeiture;

(d) provision is made for the marking of livestock entering the United Kingdom from any place of origin;

(e) minor changes are made in the procedure for giving notice of seizure, for claims relating to things seized, and for the institution of proceedings for the condemnation, as forfeited, of things seized.

Came into operation April 14, 1958. No. 558, 1958.

12. **AGRICULTURAL EMPLOYMENT. SAFETY, HEALTH AND WELFARE.** The Agriculture (Poisonous Substances) Amendment Regulations, 1958.

These regulations add to the poisonous substances specified in the Agriculture (Poisonous Substances) Regulations, 1956 (as amended by the Agriculture (Poisonous Substances) Amendment Regulations, 1957), three further poisonous substances.

Came into operation April 4, 1958. No. 566, 1958.

13. **CUSTOMS AND EXCISE.** The Import Duties (Exemptions) (No. 5) Order, 1958.

This order exempts:—(a) rice in the husk, and (b) husked rice which has not been further processed after husking from the 10 per cent. ad valorem duty chargeable under the Import Duties Act, 1932.

Came into operation April 2, 1958. No. 574, 1958.

14. **EAST AFRICA.** The Kenya (Constitution) Order in Council, 1958.

This order revokes the instruments set out in sch. 1 and makes new provision for Kenya with respect to the Governor, the Council of Ministers, the Legislative Council and the Supreme Court, and establishes a new body for Kenya, called the Council of State, having, in particular, the function of drawing attention to Bills and subordinate instruments which, in the opinion of the Council, are disadvantageous to persons of any racial or religious community.

Came into operation April 5, 1958. No. 600, 1958.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

FIRST OFFENDERS BILL

The Commons has accorded a third reading without a division to the First Offenders Bill, which proposes that s. 17 of the Criminal Justice Act, 1948, should also apply in magistrates' courts to adult first offenders.

Mr. Victor Collins (Shoreditch and Finsbury) moved the third reading. He said that it would reduce the number of men sent to prison, and that was urgently necessary in view of the fact that there were now 24,500 men in prisons and borstals, the highest number ever recorded, compared with 11,000 before the war. He contended that there was sometimes a savage disparity between the sentences imposed by magistrates for apparently similar offences. The Bill would compel a magistrate to say why he felt obliged to send a first offender to prison.

Mr. Montgomery Hyde (Belfast N.) declared that it was highly desirable that before passing sentence the bench should see whether there was any appropriate method of dealing with a first offender other than imprisonment.

Major Hicks Beach (Cheltenham) thought we were getting too sentimental about punishment of criminals. He was in favour of restoration of some measure of corporal punishment for crimes of violence, which would be a great deterrent to hooliganism.

Sir Thomas Moore (Ayr) declared that he was unhappy about the Bill which he thought would tend to increase juvenile delinquency and juvenile crimes of violence. His Army experience had shown that a substantial punishment for a first offence had an enormous effect against repetition. He was already greatly disturbed at the lenient sentences passed by many magistrates' courts on first offenders, and he feared that the Bill would lead to even greater contempt for magistrates' courts by the young offender. He regretted that corporal punishment was not still available.

The Under-Secretary of State for the Home Department, Mr. David Renton, welcomed the Bill on behalf of the Government. He said that the effect of s. 12 of the Criminal Justice Act, 1948, had been that the number of young first offenders sent to prison fell by 60 *per cent.* when courts were obliged to give reasons. He disagreed with the suggestion that the Bill was not flattering to magistrates, and said that magistrates had never taken it amiss when Parliament had given them guidance by altering the law. In the minds of some people, punishment was an end in itself, but the Prison Commissioners' advice was that sentences of up to six months were of little value from the point of view of reformative training. They should not refrain from passing the Bill because of any difficulties which the probation service might be experiencing temporarily.

He went on to say that the Bill applied to imprisonment for default in payment of fines, but it was inappropriate that it should do so. It would be placing an undue burden on magistrates to have always to explain their reasons, which must be obvious.

Sir George Benson (Chesterfield), the sponsor of the Bill, said he would arrange for the references to fines to be deleted. He declared that the sentencing policy of the 1,000 magistrates' courts was chaotic. Over the past six years, Bootle sent *eight per cent.* of cases to prison, Bournemouth 40 *per cent.*, Eastbourne 42 *per cent.* and Worcester 44 *per cent.* It might be that Eastbourne, Worcester and Bournemouth were invested by dangerous criminals. On the other hand, they might be invested by dangerous magistrates.

The Bill was read a third time.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, April 29

STATUTE LAW REVISION BILL—read 2a.

PREVENTION OF FRAUD (INVESTMENTS) BILL—read 2a.

Thursday, May 1

WATER BILL—read 3a.

HOUSE OF COMMONS

Tuesday, April 29

SLAUGHTERHOUSES BILL—read 3a.

LAND POWERS (DEFENCE) BILL—read 3a.

Wednesday, April 30

DISTRIBUTION OF INDUSTRY (INDUSTRIAL FINANCE) BILL—read 2a.

Friday, May 2

SALE OF MILK BILL—read 1a.

FIRST OFFENDERS BILL—read 3a.

MATRIMONIAL PROCEEDINGS (CHILDREN) BILL—read 3a.

LITTER BILL—read 3a.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

Even after a year the *MacFisheries* case is still attracting attention: *see* 122 J.P.N. 100 and 166. You come out very strongly for hygiene in the handling of food but seem to criticize my justices for convicting: *see* final paragraph on page 166. I enclose a copy of my notes and a copy of the case as stated, which should be read together to give a complete account of the proceedings. The Lord Chief Justice was complimentary about the care taken by the justices. It is not reasonable of the anonymous learned member of the legal profession to whom you are greatly indebted as a correspondent to criticize the justices, as he does in the last paragraph on p. 166, by saying "the curious finding by the magistrates" nor does it make sense to say "the prosecution might have been able to construct a more effective argument in the Divisional Court, if the magistrates had refused to convict . . ."

Yours faithfully,
A. N. MURDOCH.

St. Mary's Hall,
Coventry.
March 21, 1958.

[We have perused the transcript and Case Stated with the greatest interest: *see* a Note of the Week in this issue.—*Ed., J.P. and L.G.R.*]

CONFERENCES, MEETINGS, ETC.

"PROSTITUTION": THE I.S.T.D. CONFERENCE

The opening "text" of the I.S.T.D. Spring Weekend Conference on "Prostitution," which was held at Bracklesham Bay, on the Sussex coast, was "She remains, while creeds and civilizations rise and fall . . ."

In the opening lecture on "The Law and the Prostitute," Miss Joan Graham-Hall gave a review of the history of prostitution in ancient and modern civilizations, and of the similar and equally unavailing attempts to suppress it in every age.

Speaking on "Prostitution and Morals," the Venerable J. H. L. Morrell, Archdeacon of Lewes, described the Wolfenden Report as heavily weighted against the prostitute as compared with her client. He emphasized that the heart of the problem is male demand—the tradition that masculine chastity is an impossibility and sexual experience a sign of manliness. The increased penalties against prostitutes advocated by the report could have no effect at all; they were only a repetition of the punitive methods which had been tried and had failed in every age. It was dangerous to concentrate on sex morality as a thing in itself, instead of as one part of the whole moral law, "the standard of behaviour proper to man as man."

The next session was devoted entirely to "The Clients of Prostitutes." Dr. T. C. N. Gibbens, senior lecturer in forensic psychiatry at the Maudsley Hospital Institute of Psychiatry, spoke about the results of the plot survey which he has already carried out for a much wider investigation sponsored by the Mental Health Research Fund. This is believed to be the first intensive research into the kind of men who resort to prostitutes and Dr. Gibbens has already found that they belong to certain fairly clear personality groups. Generally there are deeper causes underlying an extreme shyness and inability to make contact with "nice" girls—often a very disturbed childhood with a pattern of strict but loved mothers and bad fathers. The clients of prostitutes are really afraid of sex, and sometimes promiscuity is a defence against homosexual tendencies. But they are generally very pleasant and likeable people, responsive and warm-hearted—and they can give interesting information about prostitutes themselves and the techniques of the calling.

The concluding sessions of the conference dealt with "The Psychopathology of the Prostitute" and with "The Prostitute and Society." Dr. Edward Glover asked "Is prostitution pathological?" He spoke of the difficulty of getting enough material to study prostitution clinically, because it is not in itself regarded as a condition needing treatment. From the analytical view, it is a primitive phase in sexual development, a kind of sexual backwardness.

"THESE TROUBLESOME DISGUISES"
(A REMINISCENCE)

We are indebted to a reader for referring us to an interesting parallel to the case noted in this column (*ante*, p. 29) under the above main title. We were not aware, when we last wrote on the subject, that the stage had been set, and the device employed, nearly a century ago. Sir Henry Hawkins, Q.C., who became a Judge of the Exchequer division in 1876, and was subsequently elevated to the House of Lords as Baron Brampton, at the age of 81, describes in his Reminiscences an episode which (he says) "caused no little amusement at the time; indeed, for years after, Baron Parke used to tell the story with the greatest pleasure." Hawkins' own part in the affair caused him so little compunction that he devotes an entire chapter to the recital.

A prize-fight had taken place on Frimley Common, Surrey, in which one of the combatants was killed. The survivor escaped, but a warrant was issued for his apprehension on a charge of manslaughter. Soon afterwards Hawkins was approached by "a sporting attorney" who had been instructed (by a third party) for the defence. The accused, it was said, would surrender to the police, if so advised, during the current Guildford Assizes; but his "battered appearance" would severely prejudice both the jury and Lord Chief Justice Erle, who detested the Prize Ring and was "consequently a dangerous Judge (*sic*) to have anything to do with a case of this kind." Hawkins, by his own account, dropped the solicitor a pretty broad hint that the man would do well to keep out of the way until the next Assizes, at which Baron Parke was to preside.

In due course the same "sporting attorney" again sought Hawkins' advice:

> "'Would it be proper,' he asked, 'for my client to show his respect for the court and dress in a becoming manner; or should he appear in his everyday clothes as a working bricklayer, dirty and unwashed?'
>
> "Again I advised" (writes Hawkins), "as was my duty, that he should scrupulously regard the dignity of the bench, and show the greatest respect to the learned Judge who presided; that he ought not to come in a disgraceful costume if he could help it, but appear as becomingly attired as possible."

After uttering some sententious platitudes upon the impropriety of attempting to deceive the Judge, Hawkins, who seems to have been a past master in the art of hinting,

> "suggested that any costume other than that of the man when actually engaged in the fight *might* throw some difficulty in the way of a young and inexperienced country constable identifying him . . . Judge, now, of my surprise, when the case was called on, to see the prisoner appear in the dock looking like a *young clergyman*, dressed in a complete suit of black, a long frock coat, fitting him up to the neck and very nearly down to the heels. He had the appearance of a very tame curate."

And the narrator has the effrontery to add:

> "It was a masterpiece of deception, *notwithstanding my serious warning*" (italics ours).

Even now Hawkins had another card to play. He directed all the fervour of his celebrated eloquence at an elderly Quaker, in the front row of the jury, who was clearly "what might be called a 'factor' in the situation." He begged the Quaker to imagine himself putting off the austere costume of his sect and assuming the undress uniform of a prize-fighter, "with the additional ornamentation of a couple of your front teeth knocked out." Would the respectable juryman's own good wife herself recognize "the partner of her joys?"

This sally, not unnaturally, produced a good deal of hilarity among the audience, and some little remonstrance from the learned Judge. The wily advocate (still addressing himself to the embarrassed Quaker) then administered his *coup de grâce*. Would the gentleman in the front row of the jury *recognize himself* in a looking-glass, if his nose had been flattened, his eyes swollen black, blue and red, his cheeks gashed and bloody—which is how the young policeman had described the appearance of the accused as it was immediately after the fight?

> "His Lordship, after summing up the case to the jury, looked down quietly to me, as I was sitting below him, and murmured: 'Hawkins, you've got all Epsom with you!' 'Yes,' I answered, 'but you have got the Quaker; he was the only one I was afraid of.' 'You have transformed him,' said the Judge . . . The jury returned a verdict of 'not guilty.' I must say, however, that Parke did his utmost to obtain a conviction, *but reason and good sense were too much for him.*" (our italics again).

Strange goings-on, indeed, in the criminal courts of the 1850s! But Hawkins' most celebrated exploit was yet to come, in the Tichborne case of 1871 to 1874. "I did what I could," he says, unctously, "to shorten the proceedings. My opening speech was confined to six days, as compared with 28 on the other side; my reply to nine." That Marathon of trials lasted 188 days in all; the impersonation of the Tichborne heir by Arthur Orton, son of a Wapping butcher, was perhaps the most troublesome of all disguises. But that is another story. A.L.P.

BILLS IN PROGRESS

1. **Dramatic and Musical Performers' Protection Bill.** An Act to consolidate the Dramatic and Musical Performers' Protection Act, 1925, and the provisions of the Copyright Act, 1956, amending it. [H.L.]

2. **Horse Breeding Bill.** An Act to consolidate the Horse Breeding Act, 1918, and the Animals Act, 1948. [H.L.]

3. **Marriage Acts Amendment.** [As amended by Standing Committee C.]

4. **Industrial Assurance and Friendly Societies Act, 1948 (Amendment).** To amend the Industrial Assurance and Friendly Societies Act, 1948, by increasing the limit on the amount of insurances on the life of a parent or grandparent. [Private Member's Bill.]

5. **Nationalized Industries Loans Bill.** An Act to continue until the end of August, 1958, the power to make advances under s. 42 of the Finance Act, 1956.

6. **National Health Service Contributions Bill.** An Act to increase the rates of national health service contributions, and for purposes connected therewith.

7. **Merchant Shipping (Liability of Shipowners and Others).** [As amended by Standing Committee C.]

8. **Maintenance Orders Bill.** An Act to make provision for the registration in the High Court or a magistrates' court of certain maintenance orders made by the other of those courts or a county court and with respect to the enforcement and variation of registered orders; for the attachment of sums falling to be paid by way of wages, salary or other earnings or by way of pension for the purpose of enforcing certain maintenance orders; and for purposes connected with the matters aforesaid.

9. **Land Powers (Defence) Bill.** [As amended by Standing Committee A.]

10. **Metropolitan Police Act, 1839 (Amendment).** [As amended by Standing Committee C.]

11. **Children Bill.** [As amended in Committee.]

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1950—*Change of surname.*

Miss A and Miss B are friends who live together in a common household. About 18 months ago Miss A received from the local authority "Mary Smith" and Miss B received from the local authority "Sally Smith" as foster-parents. Mary and Sally are sisters being the children of separated parents. Miss A has given notice to the local authority that she desires to adopt Mary Smith. At the same time Miss B has given notice to the local authority that she desires to adopt Sally Smith.

Both Miss A and Miss B have consulted me in connexion with the completion of the necessary forms to lead to the making of two adoption orders.

As the two children are natural sisters the proposed adopters desire that they shall be brought up as sisters and shall bear the same surname, and they desire that this surname shall be the maiden surname of Miss A's mother.

I have referred to the *"Oyez" Practice Notes* No. 3; *Adoption of Children* by J. F. Josling, 2nd edn., 1950, on p. 41 of which reference is made to notes to the Adoption of Children (High Court) Rules, 1926, and it is there stated that "The surname of the adopter is the name to be used for the infant in the title and the Christian name or names by which the adopter desires to call the infant should also be inserted."

I have perused other textbooks dealing with the question of adoption but have not been able to find in them any direction that the surname of the adopter must be used for the adopted child.

I shall be very much obliged to have your valued opinion as to whether or not in the circumstances outlined above it will be possible for the proposed adoption orders to include a statement that the surname of each child shall be M even though this is not the natural surname of the adopted child or the actual surname of the proposed adopters.

U. CLERICUS.

Answer.

The Adoption of Children (High Court) Rules, 1926, were revoked and replaced by the Adoption of Children (High Court) Rules, 1950.

See now s. 18 (2) (*b*) of the Adoption Act, 1950, and the footnotes to the forms prescribed by the various adoption of children rules, *e.g.*, note 7 to form No. 4 in sch. 1 to the Adoption of Children (Summary Jurisdiction) Rules, 1949 and 1952. These provisions contemplate a change of name or surname, without prescribing that the only change of surname may be to that of the adopters.

In our opinion the adoption order could include, in the paragraph indicating the names by which the infant is to be known, a surname other than that of the natural parents or the adopters.

2.—Byelaws—*Dogs excreting on footways—Footpath with no space available for dogs to use.*

The county council under s. 249 of the Local Government Act, 1933, has made a byelaw in the model form with respect to fouling by dogs of footways. The operative parts, so far as this case is concerned, are the interpretation provisions: "Throughout this byelaw the expression street means and includes any highway and any road, bridge, lane, square or passage to which the public have access for the time being," and para. (1): "No person being in charge of a dog shall allow the dog to foul the footway of any street or public place by depositing its excrement thereon, provided that a person shall not be liable to be convicted of an offence against this byelaw if he satisfies the court that the fouling of the footway by the dog was not due to culpable neglect or default on his part."

In this urban district there are footpaths fenced on each side, in such a way that between the fences the whole is metalled and available for use as a footpath. These paths are much used, and the mischief which the byelaw seeks to prevent can amount to a nuisance to those using the footpaths. It occurs to me, however, that the expression "the footway of any street or public place" suggests that there shall be something else in addition to the footway which, together with the footway, would comprise a whole, and that, this not being so in the footpaths to which I have referred, the byelaw could not be said to apply. It must be conceded that if a dog started excretion on one of these footpaths nothing could be done to stop the offence, because of the fences on each side.

Is it considered that the view I have taken is correct? Or is it felt that, notwithstanding these circumstances and including, if need be, the defence contained in the proviso to the byelaw, that an offence could be committed on such footpaths?

BOWSER.

Answer.

Our copy of the model byelaw issued from the Home Office does not define a "public place," but we do not think the definition need be considered for the present purpose. We do not regard the phrase "the footway of" (etc.) as cutting out of the general prohibition a street or public place which comprises a footway alone, with no roadway or verge to which the dog can resort. The byelaw is in our opinion designed to put the responsibility of finding a suitable spot upon the dog's master. (The interpretation suggested in the query would, in effect, put this responsibility on the highway authority.) The master who takes his dog along one of the paths described, without having made sure that (apart from accidents) it has already deposited its excrement elsewhere, can hardly excuse himself from neglect or default, which under the byelaw is culpable.

3.—Land—*Wall adjoining common—Liability for subsidence.*

Our client is the owner of a house in a village. The house, with its grounds, is surrounded by a stone wall. On the other side of the wall is a ditch and, beyond that, common land which is rocky and overgrown with heather and rough grass. Over a number of years the ditch has received no attention, and is accordingly choked up. As a result our client's stone wall has collapsed and a part of his land is waterlogged. We cannot say if there is any evidence that anyone ever cleared the ditch, but we know that our client has not, nor had his predecessors in title. The village has a parish council.

We shall be obliged if you will let us know if there is any power to compel the local authority to clear the ditch and rebuild the wall. If so, which local authority? ANFIG.

Answer.

The man who built the house would presumably go up to the edge of his land, dig a ditch to form a boundary, and throw the earth on to his land, upon which he would build a wall when the earth was consolidated. On this footing, it is his ditch. There is, no doubt, the possibility that the ditch was there, forming the boundary of the common, before the house was built, and that it is part of the common. We are not told in whom the common is now vested, but we cannot see any ground for holding either the parish council or the rural district council responsible.

4.—Landlord and Tenant—*Certificate of disrepair in clearance area.*

A few days after a notice of increase of rent in respect of a particular house becomes operative, a clearance area is declared, in which lies the house in question. It appears that in the circumstances the notice is valid. The tenant subsequently serves a form G on the landlord and in due course applies for a certificate of disrepair. Should the local authority issue a certificate, bearing in mind that it cannot reasonably expect the defects to be remedied having regard to (*a*) the inclusion of the house in a clearance area and (*b*) the age, character and locality of the house? (*see* sch. 1, part II, para. 4 (2)).

Some time could elapse before the house is made the subject of a clearance order and the family displaced, and it seems inequitable that the tenant should be required to pay an increased rent in respect of a house which is obviously unfit. Has the tenant any remedy?

Somewhat similar circumstances could arise in the case of a demolition order or a closing order.

CASTRA.

Answer.

We do not necessarily say that our answer would be the same where there was a demolition order. In the case before us, where the house may last a long time yet, we do not consider that a certificate of disrepair is improper.

5.—Licensing—*Notice, service of—Registered post—Non-delivery in ordinary course of post.*

Notices were served in respect of an application for a new on-licence to be heard at the first session of the general annual licensing meeting, and these notices were served in accordance

with the provisions of sch. 3 to the Licensing Act, 1953. The applicant encountered certain difficulties, and the application was not proceeded with at the first session. The solicitor who appeared on behalf of the applicant was asked whether he was applying for an adjournment of the application to the second session or whether a fresh notice was to be submitted. As it at that time appeared that fresh notices would have to be served because it was contemplated that two licences would have to be surrendered and not one as referred to in the original notice, the applicant's solicitor stated that a fresh application would be made.

Fresh notices were served containing the same information (except for the date of the session) as the original notice, as the proposal to surrender the additional licence was not proceeded with. The last day for service of this notice was Saturday, February 8, 1958. On Monday, February 10, 1958, the notice which had been posted on February 7, 1958, was received by the clerk to the licensing justices. On inquiry it was learned from the local post office that there was one delivery of mail only on Saturday, February 8, 1958, this delivery being made before the justices' clerk's office was open and the registered mail could not therefore be delivered and was taken back to the post office for re-delivery on Monday.

(i) Can the late delivery of a notice, or the omission to post by registered post, be regarded as inadvertence or misadventure within the meaning of s. 29 of the Licensing Act, 1953 ?

(ii) If so, can the application proceed at the second session of the annual general licensing meeting, or is it necessary for the licensing justices to further adjourn the consideration of the application ?

(iii) If the answer to (i) above is in the negative, can the justices adjourn the second session for fresh notices to be served for the hearing of the application at such further adjourned session ?

N.S.A.D.

Answer.

(i) We think that the situation is such that licensing justices would not be wrong in deeming service to have been effected on their clerk in accordance with s. 26 of the Interpretation Act, 1889, at the time of the letter delivery in the ordinary course of post when the registered letter containing the notice was not in fact delivered because the office of the clerk to the licensing justices was not then open. In any event, we think that the situation discloses an " inadvertence or misadventure " within the meaning of s. 29 of the Licensing Act, 1953.

(ii) We think that the licensing justices may proceed to hear the application at the second session of the general annual licensing meeting ; but if it is thought fit to act in accordance with s. 29 of the Licensing Act, 1953, consideration of the application should be postponed for at least two days.

(iii) Does not arise.

6.—Licensing—*Registered club—Annual dinner held away from club's registered address—Special order of exemption.*

The British Legion Club in my division is holding the annual dinner in a restaurant approximately half a mile away and in accordance with s. 100 of the Licensing Act, 1933, are supplying their own intoxicating liquor from the club as it is a special occasion.

It has been brought to my notice that they intend to apply for an extension of permitted hours for the club premises on this day and transfer the hours of the extension to the restaurant as the special occasion.

Section 100 definitely states another place can be used as a special occasion during permitted hours only. In my opinion the extension can only be for the club premises and an occasional licence will be needed at the restaurant after the permitted hours. This can only be applied for by a licence holder.

N. GILLIE.

Answer.

The answer to our correspondent's question is to be found outside the provisions of s. 100 of the Licensing Act, 1953.

A registered club does not contravene the law by holding a single special function, at which intoxicating liquor is supplied to members or their guests, in premises other than at the club's registered address (*see Humphrey* v. *Tudgay* (1915) 79 J.P. 93). On such an occasion the club seems not to be bound by the provisions of the law relating to permitted hours (*see Watson* v. *Cully* (1926) 90 J.P. 119 ; *Clarke and Peacock* v. *Griffiths* (1926) 90 J.P. 152.

We do not think that s. 107 of the Licensing Act, 1953, contemplates the grant of a special order of exemption to the secretary of the registered club in such a case.

7.—Public Health Act, 1936—*Access to adjoining land—Compensation—Recovery from defaulting owner.*

A local authority may, under s. 39 of the Public Health Act, 1936, require an owner to carry out drainage work. Sometimes the work can only be done on property belonging to an adjoining owner, or if access is obtained from adjoining land, and it is accepted that the owner has no right to carry out such work without the consent of the adjoining owner. If the local authority were to proceed in default under s. 290 would they have a right of entry on the adjoining land for this purpose under s. 287, subject to payment of compensation under s. 278 ? If so, would this compensation be an expense incurred by them for which the owner would be responsible under s. 290 (6) ?

P.T.E.C.

Answer.

We think the local authority could enter the adjoining land, under s. 287 (1) (*b*) and (*c*), which do not contain the limiting words to be found in (*a*), *viz.*, " on or in connexion with the premises." But we doubt whether they can rely on (*c*) for actually doing work which, as in this case, involves breaking the surface of the land. It is, in short, a power of entry, and the section does not go on to give a power of doing works : *cp.* 119 J.P.N. 109. If the council merely entered the adjoining land, and did no damage (*e.g.*, for purposes of survey only), any compensation would be nominal, and the second question would hardly arise. In principle, however, we think this would be part of the expenses recoverable under s. 290 (6).

8.—Public Health Act, 1936, s. 75—*House refuse—Restricting number of bins used.*

In my council's district, which is entirely residential, my authority collect house refuse weekly. Many of the houses in the district have more than one dustbin and some have even as many as five or six. This delays the collection of refuse, and I should be obliged for information on the following three points :

1. Can my council serve a notice under s. 75 (1) of the Public Health Act, 1936, stating that the approved number of dustbins shall be one per house ?

2. Can my council refuse to collect from additional dustbins, unless necessitated by special circumstances which are approved by the council ?

3. Can my council make any charge for the collection of these additional dustbins, if the answer to 1. and 2. above is " no."

ABUL.

Answer.

1. Section 75 of the Public Health Act, 1936, was new law in its present form. Its purpose, as explained by *Lumley*, was to ensure that two or more bins would be provided, where one was not enough to hold the house refuse accumulated between one collection and the next. If there are not enough bins at a house, refuse will overflow, or be put in unsuitable receptacles, or even left on the ground. This is not merely insanitary ; it means extra work at the time of collection. Purely as a matter of grammatical construction, the council might be able to serve a notice saying " one bin and one bin only," but we should hope that such a notice would be given short shrift by the magistrates upon appeal.

2. No. We are not asked about other remedies, but on the facts before us it seems that collection once a week is too seldom.

3. Again no. It is the council's duty to collect the house refuse, and they can neither charge for it nor impose a restriction upon the amount which the householder puts out for collection.

9.—Road Traffic Acts—*Requirement to give name and address—Section* 40 (1) *of Act of* 1930—*False answer—Offence against Perjury Act,* 1911, *s.* 5 (*c*).

The driver of a motor car is stopped by a police constable whilst driving his vehicle on a road and asked to produce his driving licence and certificate of insurance. As he was unable to do so, the officer asked for his name and address. The name and address given were false and the driver has been reported for the offence disclosed under s. 40 (1), Road Traffic Act, 1930. Do you consider that the driver has also committed the misdemeanour under s. 5 (*c*), Perjury Act, 1911 ?

KORCIN.

Answer.

The answer given to the constable is one which a driver is required to make in pursuance of an Act of Parliament. To give a false name and address in such circumstances seems clearly within the wording of s. 5 (*c*), *supra*, and we think that such an offence is thereby committed.